IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 2461 of 1994

KARAN CHATURBHUJ SINGH
V/S
BOARD OF REVENUE & ORS

Mr. SUDHIR SHARMA, for the appellant / petitioner

Mr. OP BOOB, A.G.A., for the respondent

Date of Order : 14.2.2007

HON'BLE SHRI N P GUPTA,J.

JUDGMENT

This writ petition has been filed by the petitioner claiming following reliefs:-

"It is, therefore, humbly prayed that:-

(a) by an appropriate writ, order or direction all the tax tanks referred to in the writ petition may kindly be declared as personal property of the petitioner.

(b) By an appropriate writ, order or direction all Pal referred above and attached with the tank may kindly be declared as personal property of the petitioner.

(c) By an appropriate writ, order or direction in the alternative the respondents be restrained permanently to disturb or damage the beeds of these six tanks by removing the good sand of tank and demolishing the grow of crop;

(d) By an appropriate writ, order or direction the respondents be directed to vacate wall of tank before crop perse State to enable petitioner to cultivate masline and at proper time:

(e) Any other appropriate writ order or direction which this Hon'ble Court deems fit just and proper in the facts and circumstances of the case.

(f) Costs be allowed to the petitioner."

The facts of the case, as alleged by the petitioner are, that the petitioner's father was Jagirdar of village Lachhuri in district Bhilwara. With commencement of Rajasthan Land Reforms and Resumption of Jagirs Act, 1952, hereafter referred to as the Act of 1952, Jagir was resumed on 23.8.54. The Jagirdar submitted a list of personal properties before the Jagir Commissioner, whereupon enquiry was held, and vide order dt. 18.3.63, the Jagir Commissioner decided the matter, and found some of the properties to be personal properties, while denied to declare some properties to be personal property. Against this order an appeal was preferred, and learned Board of Revenue remanded the matter back to the Jagir Commissioner with certain directions. The Jagir Commissioner again decided the matter and maintained the previous order vide order dt. 30.11.65. Aggrieved against that order again appeal was filed before the Board of Revenue, and the Board of Revenue vide judgment dt. 16.10.1968 again remanded the

matter to the Jagir Commissioner. The Jagir Commissioner again decided the matter on 9.5.1969, and did not accept the contention of the petitioner's father. Then, again an appeal was preferred before the Board of Revenue. The Board of Revenue again remanded the matter back to the Jagir Commissioner. The Jagir Commissioner after holding further enquiry again passed the order dt. 29.10.83, being Annexure-8. Aggrieved of this, further appeal was filed before the Board of Revenue, which was partly allowed vide order Annexure-10. The temporary right of cultivation in the tank bed land, recognised by Jagir Commissioner, was modified, and regular right of cultivation has been given. This is order Annexure-10. It is in these facts, that the above reliefs have been claimed, by raising various grounds in the writ petition, pointing out errors in the judgment of Board of Revenue.

A reply has been filed by the respondents, supporting the impugned judgments, and replying the grounds, ad-seriatim.

Arguing the writ petition it was firstly submitted, that under Section 23 of the Act it is the exclusive jurisdiction of the Jagir Commissioner to decide the question, as to whether particular property is of the nature referred to in sub-section (1) thereof, or not, while in the present case the order Annexure-8 had been

passed by the Additional Jagir Commissioner, thus the order is without jurisdiction. The other submission made is, that the authorities below have not properly considered the record in arriving at the conclusion about the nature of the properties, as to whether they fall within the nature of the properties referred to in sub-section (1), or not.

Learned counsel for the respondent, on the other hand, relied upon the provisions of Section 42A of the Act, and submitted, that in view of that provision, the Additional Jagir Commissioner did have the power to decide the matter, and therefore, there is no error therein, as rightly found by the learned Board of Revenue. Then, on merits it was submitted, that the findings have been arrived at by the two learned authorities below, after appreciating the material available on record, and no interference is required to be made in writ jurisdiction.

I have considered the submissions, and have gone through the papers available on record.

A look at the provisions of the Act shows, that in Section 2(f) Jagir Commissioner has been defined to mean the person appointed by the Government to perform the functions of a Jagir Commissioner. In this sequence Section 42A clearly authorises the Government, to delegate the powers, rather even Jagir Commissioner has the power under

Sub-section (2) thereof, to delegate the powers to any other officer subordinate to him. In that view of the matter, it cannot be said, that the order Annexure-8 is without jurisdiction.

Coming to the merits of the matter, a look at the orders Annexure-8 and 10 does show, that firstly despite giving opportunity, the petitioner did not lead any evidence to substantiate his version. Then, it has been considered, that irrigation map with respect to certain lands have been produced to show, that they were irrigated from the tanks in question, and irrigation charges were recovered. It has also been found, that in certain tanks there did exist outlets for facilitating irrigation, and irrigation charges were recovered, and where the lands were allowed to be irrigated by any system, other than the out let, different rate of irrigation charges was recovered. Then, reliance has also been placed on the old records. In my view, the findings recorded are out come of pure appreciation of evidence, more so, in absence of any evidence being led on the side of the petitioner, it cannot be said, that the findings are bad, so as to require interference in my writ jurisdiction, and the learned counsel for the petitioner, in substance, mean to submit, that I should re-appreciate the entire material on record, as was available to Jagir Commissioner, de novo, and arrive at a different conclusion. I am afraid, it is not within

the scope of my 226/227 jurisdiction.

The net result is that I do not find any force in the writ petition. The same is, therefore, dismissed.

(N P GUPTA),J.

/Sushil/